

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO AND MODESTO DIVISIONS

In re)	
)	
)	GENERAL ORDER
CHAPTER 13 CASES)	No. 97-02
)	[Sacramento & Modesto Divisions
Only])	
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Paragraph 1. Applicability

(a) This order relates to chapter 13 cases filed or transferred to the Sacramento and Modesto Divisions of the Eastern District of California and supersedes any previous orders in conflict with its provisions. This order applies to chapter 13 cases filed on or after January 1, 1998. Paragraphs 7, 8, and 9, however, apply to all pending cases.

(b) The definitions set forth in the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California ("Local Rules") effective December 12, 1997, and all subsequent amendments, apply to all terms used in this order.

(c) To the extent this order conflicts with the provisions of the Local Rules, the provisions of this order shall take precedence. In all other respects, the Local Rules shall apply in all chapter 13 cases.

(d) By this general order, and the form chapter 13 plan required by it, the court seeks to streamline the procedures for chapter 13 plan confirmation and the adjudication of related matters, such as lien avoidance and valuation of assets, maximize the likelihood of successful financial reorganization and performance of chapter 13 plans, insure nondiscriminatory and fair treatment of claims, and provide for the prompt approval and payment of professional fees. The court determines that the procedures and forms mandated in this general order are reasonably calculated to obtain these goals and fairly balance the administrative necessities imposed on the court and the chapter 13 trustee by a large and complex chapter 13 caseload with the due process rights of the debtor and creditors.

Paragraph 2. Mandatory Forms

All chapter 13 debtors shall:

(a) utilize the form which is attached as Exhibit 1 to this order and entitled "CHAPTER 13 PLAN." This standard form chapter 13 includes motions to value collateral and motions to avoid liens pursuant to 11 U.S.C. § 522(f)(1)(A) & (B). This plan shall be completed and filed within 15 days of the filing of the petition as directed in Local Rule 3015-1(a). No changes, interlineations, or alterations of any kind may be made to the printed material in the plan. Should any be made, they will be given no force or effect. Any changes to the printed material must be set out in writing on Attachment B of the plan. The plan with the completed Attachments A and B, if any, and any included motions (Attachments M-1, M-2, or M-3) shall constitute the debtor's chapter 13 plan. Nothing in the plan or in this general order precludes a debtor from proposing, for good cause, amendments or modifications to the form attached as Exhibit 1.

(b) include in or file with the plan any motions pursuant to section 522(f) (all references to sections are to sections of the Bankruptcy Code) to avoid judicial liens (Attachment M-1), or nonpossessory, nonpurchase money liens (Attachment M-2). If these liens are not avoided, the underlying claims must be treated as secured in the plan.

(c) include in or file with the plan all motions to value collateral and determine secured claims (Attachment M-3) pursuant to subsections (a) and (d) of section 506 and Federal Rule of Bankruptcy Procedure ("FRBP") 3012.

(d) submit to the chapter 13 trustee ("Trustee") at the section 341 meeting of creditors a proposed order confirming their chapter 13 plan. This order shall substantially comply with the form of the order appended hereto as Exhibit 2.

Paragraph 3. Service of Plan and Motions

(a) The Trustee shall serve all creditors and other persons entitled to notice with a copy of the debtor's plan or a summary of it as the court may direct.

(b) If the debtor has included in the plan or otherwise filed any motions to avoid liens pursuant to section 522(f) or motions to value collateral pursuant to subsections (a) and (d)

of section 506 and FRBP 3012, the debtor or debtor's attorney shall serve the motions and the plan at least ten (10) calendar days before the meeting of creditors held pursuant to section 341(a) upon the respondent creditor(s) as required by section 342(c), FRBP 7004, and Local Rules 2002-1 and 9014-1. The plan shall be accompanied by a separate notice which contains the address of the debtor and the debtor's attorney and states: "You are hereby notified that the debtor has filed a proposed chapter 13 plan which includes a motion seeking to [describe the relief sought in the motion]. If you oppose the motion and/or wish to object to confirmation of the chapter 13 plan, it is incumbent on you to file an objection and set it for hearing in the United States Bankruptcy Court, Eastern District of California, [Sacramento Division, located at 501 I Street, Suite 3-200, Seventh Floor, Courtroom 28, Sacramento **or** Modesto Division, located at 1130 12th Street, Suite C, Modesto], California. An objection to the plan and/or the motion must be filed within 14 days of the conclusion of the meeting of creditors convened pursuant to section 341(a) of the Bankruptcy Code and be set for a court hearing within 40 days thereafter. The meeting of creditors is set to take place on [insert date]. The objection, all evidence supporting the objection, and a notice containing the date, time, and place of the hearing on the objection shall be served on the Trustee, debtor, and debtor's attorney at the address(es) stated in this notice at least 22 days prior to the hearing."

Paragraph 4. Attorney Representation and Attorneys' Fees

(a) Any attorney who is retained to represent a debtor in a chapter 13 case is responsible for representing the debtor on all matters arising in the case, including, without limitation, motions for relief from the automatic stay, motions to avoid liens, objections to claims, and adversary proceedings.

(b) Attorneys seeking to withdraw from representation of a debtor shall comply with Rule 182 of the Local Rules of the United States District Court, Eastern District of California.

(c) Compensation paid to attorneys for the representation of debtors shall be determined according to the Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases and, where applicable, the Guidelines for Compensation and Expense Reimbursement of Professionals.

(d) After the filing of the petition, a debtor's attorney shall not accept or demand from the debtor any payment for services or cost reimbursement without first obtaining a court

order authorizing the fees and/or costs and specifically permitting direct payment of those fees and/or costs by the debtor.

Paragraph 5. Plan Payments

(a) Plan payments shall be made monthly and are due on the twenty-fifth day of each month beginning the month after the petition is filed. Debtors shall make all plan payments coming due before confirmation of the plan by cashier's check or money order. Payment by Wage Order or Electronic Fund Transfer will not occur until after the plan is confirmed.

(b) Debtors shall pay directly to secured creditors all ongoing post-petition payments on home loans as well as other secured claims which have maturities beyond the term of the plan and which are not modified by the plan. All other secured claims must be paid through the plan by the Trustee.

(c) After confirmation of the plan, all plan payments shall be by electronic funds transfer or wage order with the exceptions noted below. It is the responsibility of the debtor and the debtor's attorney to insure that the transfer or wage order becomes effective after confirmation. If the transfer or wage order will not result in timely payment of the plan payment, the debtor shall make the payment directly to the Trustee by cashier's check or money order. It is also the responsibility of the debtor and the debtor's attorney to modify the transfer or wage order in those cases where the plan payment changes.

Electronic Funds Transfer (Sacramento Division Only)

(1) In all chapter 13 cases filed in the Sacramento Division, no later than 15 days following the filing of the petition, the debtor shall serve the Trustee a completed Employer Information/Electronic Transfer Authorization form, which is attached to this order as Exhibit 3. If there is more than one employer, an Employer Information/Electronic Transfer Authorization form shall be provided for each employer.

(2) Debtors who are unable to pay by electronic funds transfer shall make all payments after confirmation of their plan by wage order. Those debtors who believe there is good reason to not make plan payments by a wage order shall explain their reasons to the Trustee no later than the meeting of creditors held pursuant to section 341(a). If the Trustee nevertheless believes a wage order is appropriate, the Trustee may request dismissal of the case pursuant to Paragraph 8 of this order. In response to such motions, debtors may request

that they be excused from the requirement of a wage order. If the Trustee finds that a wage order will be administratively difficult to implement, the Trustee may dispense with the requirement and accept plan payments by money order or cashiers checks directly from the debtor.

Wage Orders (Modesto Division Only)

(3) At this time, in the Modesto Division plan payments may not be made by electronic funds transfer. Wage orders, however, are required.

(4) No later than 15 days following the filing of the petition, the debtor shall lodge with the clerk of the court a completed Wage Order, Exhibit 4. If there is more than one employer and it is necessary to deduct wages from the wages received from more than one employer in order to collect the entire plan payment, a Wage Order shall be lodged for each employer.

(5) The clerk shall execute the Wage Order on behalf of the court and return a conformed copy of the Wage Order to the debtor or to the debtor's attorney. The debtor or the debtor's attorney shall serve a copy of the Wage Order by mail on the employer upon entry of the order confirming the plan.

(6) Those debtors who believe there is good reason to not make plan payments by a wage order shall explain their reasons to the Trustee no later than the meeting of creditors held pursuant to section 341(a). If the Trustee nevertheless believes a wage order is appropriate, the Trustee may request dismissal of the case pursuant to Paragraph 8 of this order. In response to such motions, debtors may request that they be excused from the requirement of a wage order. If the Trustee finds that a wage order will be administratively difficult to implement, the Trustee may dispense with the requirement and accept plan payments by money order or cashiers checks directly from the debtor.

**Paragraph 6. Claim Objections, Plan Modifications
and Filing of Claims**

(a) Prior to the expiration of the deadline to object to proofs of claims (see subparagraph (b) below), the Trustee shall pay claims as specified in the confirmed plan unless the Trustee is served with an objection to the claim which is set for hearing within 60 days of its service. Until the objection is adjudicated or settled, the Trustee shall cease paying dividends on account of the objectionable claim. If the objection is overruled, at the request of the claimant or the Trustee, the

court may make provision for payment of any dividends not paid while the objection was pending.

(b) Any other objections to claims shall be filed, served, and set for hearing no later than 90 days after service by the Trustee of the Notice of Filed Claims. The Notice of Filed Claims shall be filed and served by the Trustee upon the debtor and the debtor's attorney, if any, no later than the longer of 250 days after the order for relief or 180 days after plan confirmation. Any proof of claim not timely objected to shall continue to be paid by the Trustee pursuant to the terms of the confirmed plan.

(c) Nothing herein shall prevent the debtor, the Trustee, or any other party in interest from objecting to a proof of claim after the expiration of the deadline for objections specified in subparagraph (b) above. However, any objection filed after the expiration of that deadline shall not, if sustained, result in any order that the claimant refund amounts paid on account of its claim.

(d) If the Notice of Filed Claims includes claims which are not provided for in the plan or which make the plan no longer feasible, the debtor shall file a motion to modify the plan to make the necessary adjustments, changes, deletions, or other modifications. This motion shall be filed, served, and set for hearing no later than 120 days after service by the Trustee of the Notice of Filed Claims.

(e) Nothing herein shall prevent the debtor, the Trustee, or the holder of an allowed unsecured claim from requesting plan modifications at other times.

(f) If a creditor fails to file a proof of claim within the time required by FRBP 3002(c) or section 502, the debtor or the Trustee may (but are not required to) file a proof of claim on behalf of the creditor pursuant to FRBP 3004. The time for the filing of such a claim is extended to 90 days after service on the debtor or his counsel of the Notice of Filed Claims.

(g) If the court enters an order valuing a creditor's collateral and the creditor has filed or later files a proof of a secured claim in an amount greater than the value established for the collateral, the allowed secured claim shall be the value of the collateral determined by the court. It is unnecessary for the Trustee or the debtor to file a claim objection in addition to the motion valuing the collateral.

(h) If the court enters an order avoiding the judicial lien or nonpossessory, nonpurchase money security interest of a creditor and the creditor has filed or later files proof of a secured claim which identifies as security only the avoided

lien or security interest, the claim shall be allowed as a general unsecured claim. It is unnecessary for the Trustee or the debtor to file a claim objection in addition to the lien avoidance motion.

Paragraph 7. Payment Defaults

If the debtor fails to make any plan payment pursuant to a confirmed plan, including direct payments to creditors, the Trustee may mail to the debtor and the debtor's attorney written notice of the default. If the debtor believes that there is no such default, the debtor shall set a hearing within 30 days of the mailing of the notice with 14 days' notice to the Trustee. If the court concludes that there has been a default, the case will be dismissed. Alternatively, debtors may acknowledge that payments have not been made and, within 30 days of the mailing of the notice, either cure the default or file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has changed, amended Schedules I and J shall be filed with the motion to modify. Debtors shall have 30 days from the filing of the motion and proposed modified plan to obtain court approval of the modified plan. If the debtor fails to timely set a hearing on the Trustee's notice, or cure the default, or file a proposed modified plan and motion, or perform the modified plan pending its approval, or obtain approval of the modified plan, the case will be dismissed without a hearing on the Trustee's application.

Paragraph 8. Motions to Dismiss

For motions filed by the Trustee pursuant to section 1307(c), Local Rule 9014 is modified to permit a hearing on the motion on as little as 14 days notice to the debtor and the debtor's attorney. No written opposition need be filed unless the debtor and the debtor's attorney have been given at least 22 days notice of the hearing. However, if written evidence has not been filed by the debtor, the debtor and/or his/her witness should be present at the hearing and prepared to testify. Failure to file written opposition and evidence, when required, may be deemed a waiver of opposition to the granting of the motion or may result in the imposition of sanctions.

Paragraph 9. Automatic Stay

(a) A secured creditor who is receiving payments from the Trustee through the plan and who obtains an order granting relief from the automatic stay to foreclose on its collateral, shall serve an endorsed copy of the stay relief order on the Trustee by either utilizing Local Rule 9022-1 or otherwise mailing an endorsed copy.

(b) When the stay relief order unconditionally permits the creditor to foreclose or repossess its collateral, the Trustee shall cease making payments on the creditor's secured claim if he has received a copy of the endorsed order more than five (5) court days prior to a scheduled plan distribution unless the order granting relief from the automatic stay provides otherwise.

(c) If the court reimposes the automatic stay or issues an injunction preventing the foreclosure or repossession, the trustee shall recommence making payments on the creditor's secured claim if he has received a copy of the endorsed order or injunction more than five (5) court days prior to a scheduled plan distribution unless the order or injunction provides otherwise.

(d) A creditor secured by real property that is the debtor's principal residence shall continue to mail to the debtor, the automatic stay notwithstanding, the customary monthly statement or payment coupon unless and until a plan is confirmed which provides for surrender of the real property to the creditor.

Dated: December 12, 1997

By the Court

David E. Russell
Chief Bankruptcy Judge

Christopher M. Klein
Bankruptcy Judge

Jane Dickson McKeag
Bankruptcy Judge

Michael S. McManus
Bankruptcy Judge